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REMARKS

For the amendments made to thc claims and the remarks made herein, applicant respectfully requests reconsideration and withdrawal of the rejections.

Claims 1-26 are pending and stand rejected.

Claims 1, 2, 3, 5, 6, 9, 10, 12, 14, 15, 16, 18, and 21-26 have been amended. No new matter has been added. Support from the amendments may be found on at least page 10, first paragraph. Claim 11 has been cancelled.

Claims 2, 3, 5 and 10 are rejected under 35 USC 112, second paragraph as be indefinite. The cxaminer has not indicated that claim 1 stands rejected under 35 USC 112, second paragraph. However, the examiner recites a reason for rejecting claim 1. Applicant, hence, has prepared a response to the examiner's reason for rejecting claim 1.

With regard to claim 1, applicant has amended this claim to recite a "new" bandwidth rather then a "best" bandwidth. Support for this amendment may be found in claims 7-9, which depend from claim 1. Having amended claim 1, applicant submits that the reason for the examiner's rejection of the claim has been overcome and can no longer be sustained. Applicant respectfully requests entry of the amendment and allowance of the claim.

With regard to claims 2, 3, 5 and 10, applicant respectfully submits that the subject matter claimed is not indefinite, as the step of filtering is a further step in view of thc steps recited in claim 1. However, in the intcrest of advancing the prosecution of this matter, applicant has elected to amend these claims to more clearly state the invention. Having amended the claims, applicant submits that the reason for the examiner's rejection of the claim has been overcome and can no longer be sustained. Applicant respectfully requests entry of the amendments and allowance of the claims.

Claims 1, 2, 5, 6, 9-15, 18 and 21-24 stand rejected under 35 USC 102(b) as being anticipated by Sisalem (XP-002226884, "The Loss-Delay Based Adjustment Algorithm: A TCP-Friendly Adaptation Scheme." It is the examiner's position that Sisalem discloses each and every element claimed.

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Applicant respectfully disagrees with, and explicitly traverses, the examiner's reason for rejecting the claims. However, in the interest of advancing the prosecution of this matter, applicant has elected to amend the independent claims to more clearly state the invention. More specifically, applicant has amended claim 1, for example, to further recite that at least 3 packets are contained in each burst and that the bandwidth samples for each of said burst is computed based on a difference between a spacing between the first and the last packet within each of said burst. Support for this amendment is shown in claim 11.

Sisalem, as read by applicant, teaches a method for determining a bottleneck bandwidth in a network by measuring the inter-packet spacing between two packets that are transmitted without intervening packets between them. The inter-packet spacing is considered proportional to the time required for the bottleneck router to process the second packet of the pair. Sisalem fails to teach burst of at least 3 packets and computing bandwidth samples for each burst based on the difference between first and the last packet in each burst, as is recited in the claim.

A claim is anticipated only if each and every element recited therein is expressly or inherently described in a single prior art reference. Sisalem cannot be said to anticipate the present invention, because Sisalem fails to disclose each and every element recited. As shown, Sisalem fails to disclose "bursts of at least 3 packets" and "bandwidth samples for each of said bursts is computed based on the difference between a spacing between the first and last packet in each of said burst."

Having shown that Sisalem fails to disclose each and every element claimed, applicant submits that the reason for the examiner's rejection of the claim has been overcome and can no longer be sustained. Applicant respectfully requests reconsideration, withdrawal of the rejection and allowance of the claims.

With regard to claims 12 and 23, the examiner rejected these claims citing the same reference used in rejecting claim 1. Thus, applicant's remarks made in response to the examiner's rejection of claim 1 are also applicable in response to the examiner's rejection of claims 12 and 23, as these claims recite subject matter similar to that recited in claim 1. Accordingly, in view of the remarks made with regard to the rejection of claim 1,

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which are repeated herein in response to the rejection of claims 12 and 23, applicant submits that the examiner's reason for rejecting claims 12 and 23 has been overcome and the rejection can no longer be sustained. Applicant respectfully requests withdrawal of the rejection and allowance of the claims.

With regard to claims 2, 5, 6, 9-11, 13-15, 18, 21, 22 and 24, these claims depend from independent claims 1, 12 and 23, respectively, which have been shown to be allowable in view of the cited reference. Accordingly, these claims are also allowable by virtue of their dependence from an allowable base claim

Claim 3-4, 7-8, 16-17, 19-20 and 25-26 are rejected under 35 USC 103(a) as being unpatentable over Sisalem in view of Berthaud (USP No. 5,815,492).

As discussed previously, Sisalem discloses a method for determining a bottleneck bandwidth in a network by measuring the inter-packet spacing between two packets that are transmitted without intervening packets between them. The inter-packet spacing is proportional to the time required for the bottleneck router to process the second packet of the pair. Sisalem fails to teach burst of packets and computing bandwidth samples for each burst based on the difference between first and the last packet in each burst, as is recited in the claim.

Berthaud, as read by applicant, teaches a method and system for adapting access to a packet switching network including a dynamic bandwidth adjustment mechanism which continuously monitors the mean bit rate to the signal source and low probability of the connection. These values are filtered to remove noise and then used to test whether the values fall within a pre-defined acceptable adaptation region in the mean bit rate, loss probability plane. Berthaud fails to disclose filtering of samples "encountering OS delay."

A claimed invention is prima facie obvious when three basic criteria are met. First, there must be some suggestion or motivation, either in the reference themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the teachings therein. Second, there must be a reasonable expectation of success. And, third, the prior art reference or combined references must teach or suggest all the claim limitations.

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With regard to claims 3, 4, 16, 17, and 25-26 Sisalem and Berthaud are totally silent with regard to filtering of samples encountering OS delay. Neither Sisalem nor Berthaud appreciate the present invention utilizing filtering samples encountering OS delay. Accordingly, one would not look to Sisalem and Berthaud to develop the novel feature of the present invention as recited in these claims as neither Sisalem nor Berthaud disclose filtering samples encountering OS delay.

With regard to claims 7 and 19, Sisalem fails to disclose "said new bandwidth corresponds to a medium value" and Berthaud discloses a "reservation level [for the allocated bandwidth that] fails somewhere between the average bandwidth required by the user and the maximum capacity of the connection." (see col. 9, lines 11-13). Berthaud fails to disclose a bandwidth that is a median value for low speed links. According, one would not look to the teachings of Sisalem and Bertaud to develop the novel features recited in claims 7 and 19, because neither Sisalem nor Bertaud, individually or in combination, disclose all the elements recited in the claims.

With regard to claims 8 and 20, Sisalem fails to disclose "a statistical model" and Berthaud discloses such a model. However, even if the teachings of Sisalem and Berthaud were to be combined, as suggested by the examiner, the combined invention would not include all the elements claims. According, one would not look to the teachings of Sisalem and Bertaud to develop the novel features recited in claims 8 and 20, because neither Sisalem nor Bertaud, individually or in combination, disclose all the elements recited in the claims.

Having shown that the combined device of Sisalem and Berthaud fails to disclose all the elements claimed, applicant submits that claims 3-4, 7-8, 16-17, 19-20 and 25-26 are not unpatentable over Sisalem and Berthaud. According, applicant respectfully requests withdrawal of the rejection and allowance of the claims.
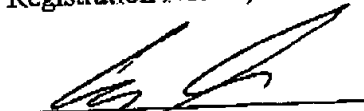
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For all the foregoing reasons, it is respectfully submitted that all the present claims are patentable in view of the cited references. A Notice of Allowance is respectfully requested.

Respectfully submitted,

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